

APPROVED

PLANNING COMMISSION SUBCOMMITTEE MINUTES

January 28, 2009

I. ROLL CALL

Present: Larry Ciardella and Gurdev Sandhu
Staff: Ah Sing, Andrade, and Hom

1. MINOR SITE DEVELOPMENT PERMIT NO. MS09-0001

Cindy Hom, Assistant Planner, presented a request to install a new illuminated red light band at the top of mansard roof for the restaurant building located at 175 W. Calaveras Blvd. Ms. Hom recommended denying Minor Site Development No. MS09-0001 subject to the Conditions of Approval.

Motion to deny Minor Site Development Permit No. MS09-0001.

M/S: Ciardella, Sandhu

AYES: 2

NOES: 0

II. ADJOURNMENT

This meeting was adjourned at 6:46 p.m.

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PLANNING COMMISSION MINUTES

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I. PLEDGE OF ALLEGIANCE

Chair Williams called the meeting to order at 7:09 P.M. and led the Pledge of Allegiance.

II. ROLL CALL/SEATING OF ALTERNATE

Present: Aslam Ali, Larry Ciardella, Sudhir Mandal, Gurdev Sandhu,
Noella Tabladillo, and Cliff Williams
Absent: Alex Galang
Staff: Ah Sing, Andrade, Barnhart, Brown, Gilli, Lindsay, Oliva, and Otake

III. PUBLIC FORUM

Chair Williams invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

Syed Mohsin, CAC Commission, announced the Fourth Annual Town Hall meeting hosted by the Community Advisory Commission, Emergency Preparedness Commission, and the City of Milpitas on Thursday, February 5, 2009, at 7:00 p.m. in the Milpitas Community Center Auditorium.

Carmen Montano and Ha Phan, Library Commission, spoke about a fundraiser to provide preschool literacy, summer reading programs, story times and puppet shows, author visits and book discussion groups, music and craft programs, poetry stories and movies. They are asking for donors who would like to have their names on plaques in the library for those who donate.

IV. APPROVAL OF MINUTES January 14, 2009

Chair Williams called for approval of the minutes of the Planning Commission meeting of January 14, 2009.

There were no changes to the minutes.

Motion to approve the minutes of January 14, 2009 as submitted.

M/S: Sandhu, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

V. ANNOUNCEMENTS

Sheldon Ah Sing, Senior Planner, wanted to bring to the Commission's attention that staff has placed 3 memos on the dais for Items 1, 6, and 7.

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**VI.
CONFLICT
OF INTEREST**

Assistant City Attorney Bryan Otake asked if any member of the Commission has any personal or financial conflict of interest related to any of the items on tonight's agenda. There were no Commissioners who identified a conflict of interest.

**VII.
APPROVAL OF AGENDA**

Chair Williams asked whether staff or the Commission have any changes to the agenda. There were no changes to the agenda.

Motion to approve the agenda as submitted.

M/S: Sandhu, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

**VIII.
CONSENT CALENDAR**

Chair Williams asked whether staff, the Commission, or anyone in the audience wish to remove or add any items to the consent calendar.

Sheldon Ah Sing, Senior Planner, requested to change Item No. 5 recommendation to close the public hearing, table the item, and staff will re-notice; change Item No. 6 to be removed from the consent calendar and staff will give a presentation; and Item No. 7 to continue the public hearing to February 11, 2009.

Chair Williams opened the public hearing on Item No. 5.

There were no speakers from the audience.

Motion to close the public hearing on Item No. 5

M/S: Mandal, Ciardella

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

Motion to table Item 5 and staff will re-notice.

M/S: Mandal, Ciardella

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

***5 MAJOR TENTATIVE MAP NO. MT08-0002, CONDITIONAL USE PERMIT NO. UP08-0046, DEVELOPMENT AGREEMENT, OWNER PARTICIPATION AGREEMENT, AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA08-0005:** A request to subdivide a 24 acre site into nine (9) parcels for condominium purposes, establish building setbacks, improve existing roads, construction of a new local street, and create an urban plaza and public trail along Penitencia Creek. The project contemplates the future development of 1,573 dwelling units through a 10% density bonus for affordable housing over the entire project and an additional 25% transit density bonus on the properties zoned MXD2. Commercial space totaling 92,757 square feet is also contemplated on three (3) parcels within mixed use buildings. The project also includes a Development Agreement and an Owner Participation Agreement requesting financial assistance from the Redevelopment Agency. The project is located at the intersection of Great Mall Parkway and McCandless Drive (1315 McCandless Drive) (APNs: 086-33-092, 086-33-093, 086-33-094, 086-33-095, 086-33-098, 086-33-099, and 086-33-101), zoned a combination of Residential – Retail High Density Mixed Use and High Density Transit Oriented Residential with Site and Architectural Overlay (MXD2-S and R3-S). Applicant: Integral. Staff Contact: Sheldon S. Ah Sing (408) 586-3278. PJ # 3222. *(Recommendation: Open the public hearing and continue the public hearing to the February 11, 2009 meeting.)*

Motion to continue the public hearing on Item No. 7 to February 11, 2009.

M/S: Mandal, Ciardella

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

***7 MAJOR TENTATIVE MAP NO. MT08-0001, SITE DEVELOPMENT PERMIT NO. SZ07-0002, CONDITIONAL USE PERMIT NO. UP08-0045, AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA08-0004:** A request to further develop an existing office campus by adding 424,814 square feet of new office space in six, five story buildings and constructing an elevated parking deck. When built out, the total square footage of the campus would be 1,415,814 square feet. Because of potential environmental impacts stemming from the project, the project is subject to an Environmental Impact Report. The project also proposes a modification to the existing Development Agreement for the site. The project is located at 205 N. McCarthy Ranch Boulevard (APNs: 022-56-005 through 009), zoned Industrial Park with Site and Architectural Overlay (MP-S). Applicant: Equity Office. Staff Contact: Sheldon S. Ah Sing (408) 586-3278. PJ # 3223. *(Recommendation: Adopt Resolution No. 08-066 recommending approval of the project, the first amendment of the Development Agreement and certification of the project EIR, subject to conditions of approval.)*

Motion to remove Item 6 from the consent calendar.

M/S: Williams, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

***6 SIX MONTH REVIEW FOR CONDITIONAL USE PERMIT AMENDMENT**

NO. UA08-0010: Review of the approval which allows seating on the dance floor during restaurant/dining hours and allows the service of a full range of alcoholic beverages for the existing restaurant located at 78 Dempsey Road. The review summarizes any complaints or issues raised by the public during the last six months of operation for the restaurant. (APN: 088-04-001), zoned Neighborhood Commercial with Site and Architectural Overlay (C1-S). Applicant: Maria De Jesus Zauala. Staff Contact: Tiffany Brown (408) 586-3283. PJ # 2534.

(Recommendation: Note receipt and file; and continue until the next 6 month review.)

**IX.
PUBLIC HEARING**

**1. CONDITIONAL USE
PERMIT NO. UP08-0048**

Judi Gilli, Associate Planner, presented a request to operate a Tobacco Shop. The project is located at 1307 Jacklin Rd. Ms. Gilli recommended to Adopt Resolution No. 09-008 recommending approval of the project to the City Council subject to conditions of approval.

Commissioner Ali asked if there were any neighborhood meetings. Ms. Gilli stated there were no meetings; notices were sent out to the surrounding neighborhoods.

Commissioner Tabladillo wanted to know the distance between the tutoring center and the tobacco shop. Ms. Gilli said the tutoring center is at the other end of the complex. Commissioner Tabladillo asked if the customers can smoke in the facility. Ms. Gilli said no the facility is just for selling of retail tobacco.

Commissioner Ciardella asked if there will be video surveillance cameras. Ms. Gilli said staff could add it as a condition.

Chair Williams asked about the traffic situation. Ms. Gilli stated that the complex has about 93 parking spaces and it is at about 20% capacity; it has never been full from what she has seen.

Vice-Chair Mandal asked if there are other facilities in Milpitas of the same type. Ms. Gilli understands there are similar uses in Milpitas.

Charanjit Singh, 1462 Parkington Lane, Tracy, CA, owns a similar store in Stockton. He has visited the other stores and noticed less amount of tobacco. His store would have a greater volume of tobacco and many different varieties.

Commissioner Ciardella asked the applicant if he would be selling glass pipes and rolling paper. Mr. Singh said yes he would be selling pipes and other accessories.

Commissioner Ciardella also asked Mr. Singh if he would be willing to put in video surveillance cameras. Mr. Singh said yes he would.

Commissioner Tabladillo asked if he would be selling specialty cigars. Mr. Singh said he would be selling specialty cigars.

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Vice-Chair Mandal asked if Mr. Singh had properly trained staff. Mr. Singh stated he does have properly trained staff. He has safety measures to check IDs and his people go to training classes.

Commissioner Sandhu asked if any of the products were imported from other countries. Mr. Singh stated that his products are from California.

Chair Williams asked if there is a proposed sign for age limit. Mr. Singh stated he has a sign in front of the store and inside the store on the counter.

Chair Williams opened the public hearing.

Kevin, Bonfare Market, 1233 Jacklin Road, feels that it would be a conflict of interest. He sells the same type of items in his store.

Joi-Kho Chewi, Save \$ Store, 1343 Jacklin Road, strongly opposes the project. Mr. Chewi store is about 150 ft from the proposed store and he feels Mr. Singh's store would kill his business.

Motion to close the public hearing.

M/S: Tabladillo, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

Commissioner Ali stated he spoke to the Police Chief earlier today regarding this matter and to his understanding Mr. Singh is not allowed to sell any type of glass pipes or rolling tobacco. Ms. Gilli stated that the applicant has always responded with the thought that he would be selling pipes and paraphernalia. Chair Williams asked if this was a recommendation or direction from the Police Department. Ms. Gilli stated that the memo that the Commission read is a summary of the conversation between the Police Department and the applicant.

Commissioner Ciardella asked if there is an age limit to buy a glass pipe. Ms. Gilli stated that no there is no age limit.

Chair Williams asked Assistant City Attorney Otake to summarize the legal rulings or understanding relative to tobacco product paraphernalia. Mr. Otake stated it is illegal to sell pipes or paraphernalia for the sole use of illegal control substances; however, the sell of paraphernalia for legal non-control substances such as tobacco or dried fruits is lawful.

Vice-Chair Mandal asked staff when the application was made was it clear what was going to be sold. Ms. Gilli stated that she spoke to the applicant and he stated smoking paraphernalia would be sold.

Chair Williams recommends selling the tobacco without the paraphernalia items for the first six months. After twelve months if there are no complaints, the applicant could then sell the paraphernalia items and it would be reviewed for another time period.

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Motion to Adopt Resolution No. 09-008 approving the project subject to conditions of approval with (2) two 6-months review and video surveillance.

M/S: Mandal, Ciardella

AYES: 4

NOES: 2 (Aslam Ali, Noella Tabladillo)

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

**2. CONDITIONAL USE
PERMIT NO. UP08-0042
AND ENVIRONMENTAL
IMPACT ASSESSMENT
NO. ES08-0006**

Tiffany Brown, Junior Planner, presented a request to operate a certified Farmers' Market within the Great Mall parking lot located at 1100 S. Main Street. The market's proposed hours of operation are for Sundays from 8:00 a.m. until 1:00 p.m. during the months of April until the first Sunday prior to Thanksgiving. Ms. Brown recommended to Adopt Resolution No. 09-009 approving the project subject to conditions of approval and adopting the Negative Declaration for the project.

Chair Williams stated the Great Mall falls between Parc Place and the proposed Farmers' Market.

Chang B. Yang, 2343 So. Hugh Ave, Fresno, CA, does not think that his Farmers' Market will cause any effect on the other Farmers' Market.

Commissioner Sandhu asked if the produce or products come from local farmers or from other growers in the area. Mr. Yang stated that most of the produce would be from the San Joaquin Valley and Morgan Hill.

Commissioner Tabladillo asked Mr. Yang if he operated a Farmers' Market on other days. Mr. Yang stated no, he goes to Farmers' Market in San Leandro and other cities on Saturday as a vendor. This is the first Farmers' Market he will operate. He has been in the Farmers' Market industry for 13 years.

Chair Williams has a concern with traffic flow. Mr. Yang stated he has no personal experience with traffic problems. He will have an assistant to help with traffic flow and pedestrian safety. Chair Williams asked Mr. Yang if he has personally observed the traffic going into the Great Mall at that time. Mr. Yang stated yes in the early morning the traffic would not be any problem.

Chair Williams opened the public hearing.

Anil Godhwani, India Community Center, he is proposing to have the Farmers' Market on a Wednesday or Thursday.

Tom Rainwater, Parc Place, is against on having the Farmers' Market at the Great Mall. He feels the market should only be twice a month and only 3 hours. He also stated that there is no management plan, no sanitation, or security.

Motion to close the public hearing

M/S: Ciardella, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

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ABSTAIN: 0

Commissioner Tabladillo asked what the definition of a Certified Farmers' Market is. Mr. Yang stated the farmers have to sell the produce they grow themselves. They can not sell produce from other growers. Each grower has to be certified by the County. Commissioner Tabladillo asked the minimum and maximum of vendors at the site. Ms. Brown stated there is no minimum but there is a maximum of 104 vendors.

Vice-Chair Mandal asked about security. Ms. Brown stated there will be flaggers for pedestrian safety. Great Mall will provide security, no Police assistance.

Commissioner Sandhu suggested the applicant having his Farmers' Market on Wednesday which he believes would be more beneficial to the community.

Commissioner Tabladillo proposed having the market on another day. Mr. Yang stated the Mall opens every other day at 10:00 a.m. He said he could speak to the management at the Great Mall to see if it is feasible.

Chair Williams made a proposal to continue this item and have the applicant work with staff on a number of items brought forward and report back to the Commission. James Lindsay, Planning Director, suggested continuing the item to the next meeting.

Motion to continue the public hearing with a report back to the Commission at the February 11th meeting.

M/S: Mandal, Sandhu

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

**3. ZONING
AMENDMENT NO. ZA08-
0010, SPECIFIC PLAN
AMENDMENT NO. ST08-
0003, PARKING
ORDINANCE
AMENDMENTS**

Sheldon Ah Sing, Senior Planner, presented a request to amend the city of Milpitas Zoning Ordinance Section 53 regarding the amount of parking required, parking design standards and formatting changes to the section. The section affects parking for all zoning districts and uses within the City, including those within the Midtown and Transit Area Specific Plans. The proposed changes would affect new or remodel projects. Mr. Ah Sing recommended to Adopt Resolution No. 09-007 recommending approval of the amendments to the City Council.

Chair Williams asked if there have been any complaints. Mr. Ah Sing stated staff heard a lot from neighbors in the existing areas.

Commissioner Ciardella asked if staff could restrict restaurants from moving into buildings to solve the restaurant parking problem. Mr. Ah Sing stated that if new projects come into effect it would be up to the Commission to decide the restrictions.

Chair Williams opened the public hearing.

John Holmes, 1438 Clear Lake Avenue, stated that according to the State a restaurant is suppose to have one parking space for each employee. He is concerned about the parking capacity at the Church on Park Victoria.

E James Murar, Milpitas Station LLC, wanted to thank the Commission for bringing in the property owners and stake holders as part of the study. He is in support of staff's recommendations.

Charles McKay, Vice-President, Citation Homes Central, wanted clarification of staff's recommendation. Mr. Ah Sing said the Transit Area Specific Plan is a separate document from the Zoning Ordinance. Mr. Otake recommended accepting the Transit Area Specific Plan consistent with the staff recommendation.

Ed Mendence, State Licensed Commercial Real Estate Agent, stated that the Transit Area Specific Plan should not be exempt from the new parking requirements. Also, the guest parking space requirements should be restored to at least 20% of project parking.

Frank De Smidt, Parking Task Force, stated he also agrees that the Transit Area should not be exempt from the new parking requirements. Homeowners are disappointed with the parking problems they are having. He feels there should be little tandem parking as possible. He also feels this is a quality of life problem. He says tandem parking and the lack of guest parking is inconvenient.

Betty Johnson, 1236 So. Park Victoria, asked how the Commission can help with the parking situation at the church on So. Park Victoria.

Chair Williams directed staff to coordinate with the residents to get their input and report back to the Commission.

Motion to close the public hearing.

M/S: Mandal, Sandhu

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

Chair Williams stated there are too many issues of concern. He said there is no enforcement of rules. He sees a problem out there and not a resolution.

Vice-Chair Mandal feels it is a good proposal. He said it is not a problem that will be resolved tomorrow. It will take some time.

Chair Williams asked if the Parking Task Force should look at developing some sort of progressive plan and see how Code Enforcement can get involved.

Vice-Chair Mandal stated from his perspective that there could be more things that could be more pro-active.

James Lindsay, Planning Director, suggested producing a document that would lay out the parking expectations. Chair Williams wanted this document to have a way of contacting someone in the City if needed.

Commissioner Tabladillo stated this document is more for the future. She is concerned with the parking situation in the present and past. She is concerned with the equity for the homeowner. She does not feel this document helps the parking situation at this time.

Vice-Chair Mandal stated he does not want to dictate how people should live in Milpitas.

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Motion to continue the item and report back to the Commission at a later date.

M/S: Ciardella, Tabladillo

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

**4. MAJOR TENTATIVE
MAP NO. MT08-0004,
SITE DEVELOPMENT
PERMIT NO. SD08-0002,
CONDITIONAL USE
PERMIT NO. UP08-0049**

Sheldon Ah Sing, Senior Planner, presented a request to create three parcels with ancillary lots for private streets; the dedication of right-of-way for public streets and a public park; and provision for utilities for the purpose of accommodating future residential development plans. The project site could accommodate up to 639 dwelling units to be located in three buildings. The proposal includes a vesting tentative map for condominium purposes. This proposal includes development plans and architectural review for the project. The project is located at 1200 Piper Drive. Mr. Ah Sing recommended to Adopt Resolution No. 09-001 approving the project to the City Council subject to conditions of approval.

Chair Williams asked if any other company utilities the rail service. Mr. Lindsay, stated there are two companies using the rail service. Chair Williams asked if the rail service was active or diminishing. Mr. Lindsay stated that VTA has completed the purchase and right-of-way necessary for the BART system.

Commissioner Ciardella asked how many parking spaces for the 639 units. Mr. Ah Sing stated there will be about 1,126 spaces provided plus 15% guest parking.

Vice-Chair Mandal asked if a school will be in that area. Mr. Ah Sing stated the school will be in the McCandless area. Vice-Chair Mandal asked who will fund the school. Mr. Lindsay stated the City will work cooperatively with the school district to look at school district funding.

Charles McKay, Citation Homes Central, stated it has been a pleasure working with staff and the other homeowners on this project. He stated in regards to the Y-situation, the alternate disposition of the existing spur line, as long as there are any paying customers on any freight line Union Pacific will continue to keep that property in use. It is likely within the near term the actual freight service may disappear, however, the line would still be available for turnaround.

Commissioner Ciardella asked if there will be a sandbox in the area. Mr. McKay stated that the large public park area will have playground equipment for kids. Commissioner Ciardella also asked about the plaza fountain. He is concerned about security and the liability of children falling in. Mr. McKay stated the fountain would not have any water at the bottom.

Commissioner Tabladillo asked if there will be a course around the park where people could walk or do exercises. Mr. McKay stated he is working with the Parks and Recreation Department and Planning to come up with a park concept that is amenity rich and activity rich. Commissioner Tabladillo asked if there is a wall along the Union Pacific railroad so it is safe enough for individuals not to have the urge to play around the train tracks. Mr. McKay stated they will provide fencing that can be attractive and provide necessary security for individuals not playing on the railroad tracks.

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Chair Williams stated that he noticed the traffic is pretty aggressive on Piper Drive. He asked Mr. McKay if he has looked at the traffic pattern in that area. Mr. McKay said that the project is designed to facilitate walking instead of driving to the Great Mall.

Commissioner Sandhu asked when the project would start. Mr. McKay stated that the project would probably start in 2010.

Chair Williams opened the public hearing.

Russ Winslow, 905 Montague Expwy, stated he does have a commercial business where he does use chemicals. He does have air and water pollution permits, onsite hazardous waste treatment permits, and a few other things. He is concerned that he is within a 1,000 feet. With the air pollution permits a school would not be permitted in that area or a daycare center.

Chair Williams wanted to make sure proper notification was sent. Mr. Ah Sing stated staff uses a permit tracking system that includes geographic information and ownership information that they receive from the County.

Motion to close the public hearing.

M/S: Mandal, Tabladillo

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

Motion to Adopt Resolution No. 09-001 approving the project to the City Council subject to conditions of approval.

M/S: Tabladillo, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

**6. SIX MONTH REVIEW
FOR CONDITIONAL USE
PERMIT AMENDMENT
NO. UA08-0010**

Tiffany Brown, Junior Planner, presented a review of the approval which allows seating on the dance floor during restaurant/dining hours and allows the service of a full range of alcoholic beverages for the existing restaurant located at 78 Dempsey Road. The review summarizes any complaints or issues raised by the public during the last six months of operation for the restaurant. Ms. Brown recommended having the Commission direct staff to return with a compliance report within the next 60 days. She requests that the item be a public hearing and the applicant will own the cost related to the noticing. During the 60 days staff and the Police Department will monitor the compliance of the conditions of approval. For clarification purposes, the compliance report will be in addition to the next 6 months review it will not take its place.

Commissioner Ali asked when the complaints were received. Ms. Brown stated most of the complaints and comments were received today.

Chair Williams opened the public hearing.

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Francisco Gomez, Owner of Gomez Market, stated he has no problem with the noise. His concern is with the parking.

Motion to close the public hearing.

M/S: Mandal, Ciardella

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

Chair Williams asked staff to get more feedback on the restaurant. Ms. Brown stated just for clarification the parking issue is not in regards to the restaurant itself.

Vice-Chair Mandal stated he is not clear on the issue. He thought the discussion was on the dance floor and noise. Ms. Brown stated that most of the letters are focused on 78 Dempsey which is the restaurant. The reason staff does hear about the parking issues in the letters is because the parking issues are not related to the restaurant.

Commissioner Tabladillo wanted clarification on the recommendation that staff would do a compliance hearing within 60 days and report back to the Commission on the Bahia Restaurant to make sure the restaurant is in compliance. She also asked if staff could provide information on the parking situation.

Motion to direct staff to return with a compliance report in the next 60 days.

M/S: Tabladillo, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

Motion to have staff review the parking situation in the area in the afternoon as well as over the weekend.

M/S: Tabladillo, Ali

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

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**X.
ADJOURNMENT**

The meeting was adjourned at 11:42 p.m. to the next regular meeting of February 11, 2009.

Respectfully Submitted,

James Lindsay
Planning & Neighborhood
Services Director

Yvonne Andrade
Recording Secretary

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